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In re Application of
GARNIER et al.

Application No.: 10/523,639

DECISION

PCT No.: PCT/EP03/08928

Int. Filing Date: 12 August 2003

Priority Date: 14 August 2002

Attorney Docket No.: 620-360

For: PRODUCTION OF MULTIMERIC FUSION
PROTEINS USING A C4BP SCAFFOLD

This is a decision on applicants' "RULE 47 PETITION", which has properly been treated as a petition under 37 CFR 1.47(a), filed 21 February 2006 in the United States Patent and Trademark Office (USPTO).

BACKGROUND

On 12 August 2003, applicants filed international application PCT/EP03/08928, which designated the United States and claimed a priority date of 14 August 2002. A copy of the international application was communicated from the International Bureau to the USPTO on 11 March 2004. The thirty-month period for paying the basic national fee in the United States expired at midnight on 14 February 2005.

On 04 February 2005, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee and the surcharge under 37 CFR 1.492(e) for providing the oath or declaration later than thirty months from the priority date.

On 18 July 2005, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) was required.

On 21 February 2006, applicants filed the instant petition under 37 CFR 1.47(a) which was accompanied by, *inter alia*, a declaration of inventors, a petition/fee for a five-month extension of time, and a statement of Fergal Hill in support of the 37 CFR 1.47(a) petition.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17(h); (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort; (3) a statement of the last known address of the missing inventor; and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

As to item (1), the petition fee of \$200 has been charged to Deposit Account 14-1140.

Items (3) and (4) have been met.

Item (2) has not been met. The declaration of Fergal Hill has been considered. It is alleged that the non-signing inventors Laurence Garnier and Michel Julien cannot be found. MPEP 409.03(d)I states in part:

Copies of documentary evidence such as internet searches, certified mail return receipts, cover letters of instructions, telegrams, that support a finding that the nonsigning inventor could not be found or reached should be made part of the statement. The steps taken to locate the whereabouts of the nonsigning inventor should be included in the statement of facts.

Here, no documentary evidence has been provided. Nor have any steps taken to locate the whereabouts of the non-signing inventor been stated.

CONCLUSION

For the above reasons, applicants' petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. **Failure to timely file the proper response will result in abandonment of this application.** Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)". No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.


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